IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2408 OF 2004

Smt. Prabha Anilkumar Pillai ... Petitioner

Vs.

Bharat Education Society & Ors. ... Respondents

Mr. K.P. Ravi for Petitioner.

Mr. O.J.Menezes for Respondent Nos. 1 and 2.

Mr. N.I. Patel for Respondent Nos. 3 and 4.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 08, 2004

P.C.

1. Rule. By consent heard forthwith.

2. The Petitioner is aggrieved by the decision of Respondent No. 3 dated 6.7.2004 whereby the Petitioners claim for being appointed as trained graduate teacher has been rejected and the appointment of the Respondent No. 5 has been upheld. The matter was heard by Respondent NO. 3 based on the order of remand dated 1.4.2004 in Writ Petition No. 514 of 2004. The learned Division Bench of this court had directed the Respondent No. 3 herein to treat the petition as representation of the Petitioner and to decide whether the Petitioner is entitled to be placed in graduate scale i.e. claimed by her. The learned Division Bench also directed Respondent No. 3 to give opportunity of being heard both to the Petitioner as well as Respondent No. 3 as also the Management of the

School and thereafter to pass a speaking order. Respondent No. 3 thereafter by the impugned order rejected the contention of the Petitioner that she is entitled to be appointed as trained graduate teacher. In so holding the Respondent No. 1 held that though Petitioner had given N.O.C. for giving up claim of graduate scale for the post which was vacant on 21.1.2002 and though she had withdrawn N.O.C. on 8.7.2002, the withdrawal letter did not bear the signature of the petitioner. Secondly third respondent held that the Management required Maths teacher and such a proposal was put up to appoint Respondent No. 5 to which the Education Officer had given approval for and this was done in the face of necessity of the school. The education officer also held that the Petitioner would be eligible for the post in the year 2004 and for the said reasons, rejected the claim of the Petitioner herein.

3. Aggrieved by this order, the Petitioner has preferred the Petition. The Respondent have filed their reply. The Petitioner has filed additional affidavit today in which he has set out that there were already teachers in the school qualified to teach Math in the higher classes and she herself is eligible for teaching Maths and has been teaching Maths as set out in the affidavit dated 7.10.2004. This was material not placed earlier before the third respondent.

4. On the other hand on behalf of the contesting respondents, it is pointed out that it was open to the authorities to grant approval for the said teacher and for that purpose reliance is placed on the circular issued by the Director of Education dated 9.7.1987 bearing No. NSC/4180/38754/6. It was therefore, submitted that there is no error committed by Respondent No. 3. It is also submitted that once the Petitioner by her application had given up the claim to the post that application cannot be withdrawn. In so far as contention by the Petitioner that she is qualified and or there is other teachers who were qualified, that is disputed.

. In the first instance, from the records available before this court, it is clear that the Petitioner had sent original copy of withdrawal addressed to the Management school and copy of the same was forwarded to the Education Authorities. Merely because a copy was not signed by itself cannot result in holding that there was no withdrawal as the original sent to the Management did have signature of the Petitioner.

5. Considering the above, and considering the contention as now raised, the ends of justice will be met if the following order is passed :

. The impugned order dated 6.7.2004 is set aside.

. The matter is remanded back to the 4th Respondent to consider the claim of the Petitioner by treating the application for withdrawal as complete with all the requirements, after hearing the petitioner herein and after giving an opportunity to the Respondent No. 5 and Management and if need be to also grant permission to be represented by counsel and to pass appropriate orders according to Law.

. It will be open to the Petitioners and contesting respondents to raise all issues to which they are entitled to in law but except the contention that the application for withdrawal was not contested. The Petitioner and Respondent No. 1 and 5 are directed to file short synopsis of their points before the third respondent. The enquiry to be completed within the period of two months from today.

. Rule made absolute accordingly. No order as to costs.

. Personal Secretary to issue authenticated copy of this order and all parties to act on the same.

(F.I. REBELLO,J.)